

MASONIC HOMES OF CALIFORNIA

IBLA 70-147

Decided October 27, 1971

Statutory Construction: Legislative History -- Act of July 6, 1970, 74 Stat. 334 -- Conveyances:
Generally -- Lieu Selections

An application for a quitclaim deed under sec. 6 of the Act of April 28, 1930, 43 U.S.C. § 872, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, 30 Stat. 11, 36, is properly rejected because the Act of July 6, 1960, 74 Stat. 334, precludes the Department from utilizing the 1930 act for that purpose.

IBLA 70-147 : S. 2670

MASONIC HOMES OF : Application for quitclaim
CALIFORNIA : deed rejected

: Affirmed

DECISION

Masonic Homes of California has appealed from the decision of the Director of the Bureau of Land Management, dated April 24, 1970, which affirmed the decision of the Sacramento land office rejecting the application of Masonic Homes for the issuance of a quitclaim deed to the SW 1/4 SE 1/4 sec. 36, T. 7 S., R. 22 E., M.D.M., California, under sec. 6 of the Act of April 28, 1930, 43 U.S.C. 872 (1964).

The appellant is the successor in interest of one Hiram M. Hamilton, who deeded the land to the United States in 1901 as a basis for a lieu selection, as was then permitted by the Forest Exchange Act of June 4, 1897 (30 Stat. 11, 36).

Hamilton filed three separate selections of tracts in lieu of the land in issue, none of which was accepted by the Government. By Departmental decision A-21005, dated December 8, 1937, Hamilton's right of reselection was denied on the ground that he had withdrawn his original selection application, and that selection rights were thereafter precluded by the Act of March 3, 1905 (33 Stat. 1264). The 1905 act preserved selection rights "if for any reason not the fault of the party making the same any pending selection is held invalid" The Department in A-21005 took the position that a relinquishment was not tantamount to an invalid selection.

The statutory background concerning forest lieu selections and quitclaims therefor is set forth in S. Rept. 1639, 86th Cong. 2d Sess., in connection with H.R. 9142, which culminated in the Act of July 6, 1960, 74 Stat. 334. That report states in part as follows:

The 1897 act [30 Stat. 11, 36] provided that --

in cases in which a tract covered by an unperfected bona fide claim or
by a patent is included within the limits of a public

forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent * * *.

This act was amended by the acts of June 6, 1900 (30 Stat. 588, 641), and March 3, 1901 (31 Stat. 1010, 1037), to limit the permissible lieu selections to --

vacant surveyed nonmineral public lands which are subject to homestead entry

and was repealed by the act of March 3, 1905 (33 Stat. 1264). The last-named act saved, however --

the validity of contracts entered into by the Secretary of the Interior prior to the passage of this Act.

and provided, further, that --

selections heretofore made in lieu of lands relinquished to the United States may be perfected and patents issue therefor the same as though this Act had not been passed, and if for any reason not the fault of the party making the same any pending selection is held invalid another selection for a like quantity of land may be made in lieu thereof.

None of these acts contained any provision for reconveyance of the relinquished lands and the 1905 act, as is evident, treated the conveyer's rights as contractual rather than proprietary in nature. It was not until the Act of September 22, 1922 (42 Stat. 1017), became law that there was authority for the Secretary of the Interior to make a reconveyance and this was limited to applications for reconveyance made before September 22, 1927. The 1930 act, which covers a large variety of situations, reopened the possibility of reconveyances. There is nothing in the history of the bill that became this act to indicate any awareness of its effect upon or applicability to the old forest lieu selections problem.

In view of the earlier legislation, the 1922 and 1930 acts must, at least so far as reconveyances are concerned, be regarded as acts of grace on the part of Congress which vested no permanent or

irrevocable right to a reconveyance in their beneficiaries. Enactment of H.R. 9142 will thus, in effect, restore the legal situation to what it was before these acts became law except as to lands which have been returned to private ownership in the meantime.

The Act of July 6, 1960 (74 Stat. 334) provided, in pertinent part, that upon demand made within one year from the date of enactment, payment of \$1.25 per acre, with interest, would be made for lands held by the Federal Government (which it had received under the Act of June 4, 1897, 30 Stat. 11, 36 as the basis for lieu selections), provided that the person who relinquished such lands, or his successor in interest, had not theretofore received his lieu selection, a reconveyance of his lands, or authority to cut and remove timber. Section 3 of the 1960 act provides:

The Act of September 22, 1922 (42 Stat. 1917; 16 U.S.C. 483) is hereby repealed. No reconveyance of lands to which section 1 of this Act applies shall hereafter be made under section 6 of the Act of April 28, 1930 (46 Stat. 257; 43 U.S.C. 872).

The appellant contends that, despite the above-quoted statutory language, the Department has both the power and the duty to issue the requested quitclaim deed. The appellant argues: (1) that the act of 1960 by its terms does not apply to the pending matter; (2) that the power to issue quitclaim deeds exists independently of the 1922 act, the 1930 act, and the 1960 act; and (3) the Director's decision would place the United States in the position of taking private land without compensation.

The legislative history of the Act of July 6, 1960, clearly demonstrates that the act was intended to cover the case at bar and that Congress intended to strip the Department of authority to execute a quitclaim deed in these circumstances. S. Rept. 1639 states in applicable portion:

PURPOSE

The principal purposes of H.R. 9142 are (1) to provide compensation for land conveyed or relinquished to the United States during the years 1897-1905 under the act of June 4, 1897 (30 Stat. 11, 36), in cases in which the lieu lands or other rights which the owners were entitled to receive under this 1897 act and supplementary legislation have not already been

given them; (2) to make inapplicable to the owners, their heirs and assigns a later provision of law directing the Secretary of the Interior, upon request, to return the original lands; and (3) thus to correct defects in the law under which such parties are now laying claim to valuable lands within the national forests and parks and taking them out of Federal ownership. [Emphasis supplied.]

With respect to appellant's contention that the denial of his application would place the United States in the position of taking private land without compensation, that report shows that Congress considered that problem as follows:

It seems proper, therefore, that provision be made, as proposed in H.R. 9142, for payment to those who are precluded from exercising their original lieu selection rights, since it was never intended that the conveyed or relinquished lands should be a donation to the Government. The price to be paid (\$1.25 per acre) was the going price of public lands generally at the time the base lands were relinquished. The interest payment proposed in the bill, as amended, commends itself to the committee as being reasonable and fair both to the original owner and to the Government.

The committee also recognizes that it has been held in some judicial decisions that until there had been an acceptance of the base lands by the Secretary of the Interior no rights accrued under the 1897 act. (For examples see Roughton v. Knight, 219 U.S. 537, 547 (1911); Daniels v. Wagner, 205 Fed. 235 (C.C.A. 9th, 1913).) Understandable as this position was, as of the time and in the light of the circumstances in which it was taken, the committee does not understand or believe that after a lapse of 60 years during which the Forest Service, the National Park Service, and other Governmental agencies have administered these lands and Congress has appropriated funds for their management, improvement, and protection, there can any longer be doubt that they have been, in law as in fact, fully accepted by the Government and that the former

owners' claims to continued ownership are without merit or equity. [1/] The committee notes that the Department of Justice has examined the bill and reports that it --

is not aware of any basis on which claims could be justified for compensation under the fifth amendment of the Constitution.

The committee agrees with this view and notes, further, that a continuation of the present system may well result in unjust enrichment of speculators whose contentions in this respect are worthless in terms of any usual standards or law or equity.

Our view that the 1960 act was intended to remove from the Department authority to issue quitclaim deeds in connection with forest lieu matters is further buttressed by Udall v. Battle Mountain Co., *supra*, as follows:

Legislative history shows clearly what Congress had in mind in 1960. It was concerned over the fact that public lands of the United States were being reconveyed under the 1930 Act (the successor of the 1922 Act) in "what the public press, conservation interests and others regard as being virtually a 'giveaway' of public resources approaching a scandal." S. Rep. No. 1639, 86th Cong., 2d Sess. (1960). The 1960 Act repealed the provision permitting reconveyance. Instead, claimants were to be compensated at

1/ Cf. Work v. Read, 10 F.2d 637 (D.C. Cir. 1925), which holds that relinquishment of forest lands to the United States, and acceptance thereof by the United States, creates a contractual relation. Also cf. Udall v. Battle Mountain Co., 385 F.2d 90, 94 (9th Cir. 1967), *cert. denied* 390 U.S. 957 (1968), which states: "Since the relinquishment to the United States contemplated a completed exchange of lands an equity in the nature of a right to rescission remained with the owner of the relinquished land until the exchange had been completed and it was not until then that the United States might be regarded as vested with unconditional ownership."

\$1.25 an acre. (The 1964 Act [2/] provides compensation on a different basis as an alternative to selection of lands and includes all who had recorded under the 1955 Act.) Further the legislative history shows that the extent of recordation under the 1955 Act was carefully analyzed in order that the cost of such compensation might be anticipated.

385 F.2d at 96

In support of its contention that the act of 1960 does not apply to the pending matter, the appellant notes that the act of 1960 does not apply to cases in which the person who relinquished the land (or his successor) had previously received a reconveyance of his lands. The appellant further notes that prior to 1960, the Government had not only rejected Hamilton's proposed lieu selections, but "returned his deed and other papers," an action which the appellant views as "tantamount to a reconveyance." In this situation, it is argued, Section 3 of the 1960 act does not apply to deprive the Department of the power to issue the quitclaim deed requested.

If the appellant's contention that the return of the papers is equivalent to a reconveyance were correct, then there would be no need for a quitclaim deed. It is, however, generally recognized that the return of a deed to a grantor does not revest him with title. Mead v. Pinyard, 154 U.S. 620 (1875); Kuntz v. Partridge, 65 N.W.2d 681, 52 A.L.R.2d 1 (N.D. 1954); Houtes v. Montes, 204 Okla. 215, 228 P.2d 651 (1951); Valley State Bank v. Dean, 97 Colo. 151, 47 P.2d 924 (1935); 23 Am. Jur. 2d, Deeds § 310.

Under Article IV, Section 3, Clause 2 of the Constitution, Congress is granted the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. . . ." In Gibson v. Chouteau, 80 U.S. (13 Wall.) 92, 99 (1872), the Supreme Court stated:

2/ The Act of August 31, 1964, 78 Stat. 751, 43 U.S.C. § 274 (1964), note, provided in part for redemption of forest lieu selection rights, which had been properly recorded under the Act of August 5, 1955, 69 Stat. 534, 43 U.S.C. § 274 (1964), note. Under the 1964 act, holders of such scrip rights were eligible to receive \$275 per acre, 43 CFR 2612.1(e)(3) (1971).

A number of claimants did receive such compensation for forest lieu selection rights.

That power is subject to no limitations. Congress has the absolute right to prescribe the times, the conditions, and the mode of transferring this property or any part of it and to designate the persons to whom the transfer shall be made.

Whether the act of 1960, supra, is a proper exercise of this power is not within the scope of our consideration.

We note, however, that our decision in this matter rests solely on our finding that the act of 1960 withdraws, or otherwise negates, the authority of the Department to grant the relief requested. We reach this conclusion reluctantly in view of the issues implicit in this case. Cf. Sol. Op., 53 I.D. 427 (1931).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision appealed from is affirmed.

Frederick Fishman, Member

We concur:

Newton Frishberg, Chairman

Francis E. Mayhue, Member

